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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

NL INDUSTRIES, INC.

Plaintiff,

vs.

TOWNSHIP OF OLD BRIDGE, et al.

Defendant.

Civil Action No. 3:13-cv-03493-MAS-TJB

**ANSWER, AFFIRMATIVE DEFENSES,  
COUNTERCLAIMS, CROSS-CLAIM,  
AND ANSWER TO CROSS CLAIMS  
ON BEHALF OF THE TOWNSHIP OF  
OLD BRIDGE**

Defendant, Township of Old Bridge, a municipal corporation of the State of New Jersey, with offices located at 1 Old Bridge Plaza, Old Bridge, New Jersey 08857, (hereinafter "Defendant" or "Township"), by way of Answer to the Second Amended Complaint ("SAC") of NL Industries, Inc ("Plaintiff") hereby states as follows:

**SUMMARY OF THE ACTION<sup>1</sup>**

1. Township denies the allegations in paragraph 1 of the SAC that are directed at Township. Township is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and leaves Plaintiff to its proofs.

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<sup>1</sup> For convenience, the headings used in the Township's Answer mirror the headings used by Plaintiff in the SAC. To the extent that any or all of the headings are considered to be factual allegations by the Plaintiff they are denied by Township.

2. Township denies the allegations in paragraph 2 of the SAC that are directed at Township. Township is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and leaves Plaintiff to its proofs.

3. Township denies the allegations in paragraph 3 of the SAC.

4. Township denies the allegations in paragraph 4 of the SAC that are directed at Township. Township is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and leaves Plaintiff to its proofs.

5. To the extent that the allegations in paragraph 5 of the SAC are directed at Township, Township denies those allegations.

6. Township is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the SAC and leaves Plaintiff to its proofs.

7. Township denies the allegations in paragraph 7 of the SAC.

8. Township denies the allegations in paragraph 8 of the SAC.

9. Township denies the allegations in paragraph 9 of the SAC that are directed at the Township. Township is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and leaves Plaintiff to its proofs.

10. To the extent that the allegations in paragraph 10 of the SAC are directed at Township, Township denies those allegations. Township is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and leaves Plaintiff to its proofs.

11. To the extent that the allegations in paragraph 11 of the SAC are directed at Township, Township denies those allegations. Township is without knowledge or information

sufficient to form a belief as to the truth of the remaining allegations in this paragraph and leaves Plaintiff to its proofs.

12. The Township denies the allegations in paragraph 12 of the SAC that are directed at the Township. Township is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and leaves Plaintiff to its proofs.

13. The allegations in paragraph 13 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and leaves Plaintiff to its proofs.

14. Township is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and leaves Plaintiff to its proofs.

15. To the extent that paragraph 15 of the SAC is a summary of the Plaintiffs' legal claims and relief sought, and not allegations of fact, no response is required. To the extent that a response is required, Township is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and leaves Plaintiff to its proofs.

16. To the extent that paragraph 16 of the SAC is a summary of the Plaintiffs' legal claims and relief sought, and not allegations of fact, no response is required. To the extent that a response is required, Township is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and leaves Plaintiff to its proofs.

17. To the extent that paragraph 17 of the SAC is a summary of the Plaintiffs' legal claims and relief sought, and not allegations of fact, no response is required. To the extent that a response is required, Township is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and leaves Plaintiff to its proofs.

**PARTIES**

18. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 18 of the SAC.

**A. Public Polluter Defendants**

19. Admit.

20. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 20 of the SAC and leaves Plaintiff to its proofs.

21. Admit.

**B. Current Property Owner/Operator Defendants**

22. Admit.

23. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 23 of the SAC and leaves Plaintiff to its proofs.

**C. Source Material Defendants**

**1. NL Customer Defendants**

24. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 24 of the SAC and leaves Plaintiff to its proofs.

25. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 25 of the SAC and leaves Plaintiff to its proofs.

26. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 26 of the SAC and leaves Plaintiff to its proofs.

27. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 27 of the SAC and leaves Plaintiff to its proofs.

28. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 28 of the SAC and leaves Plaintiff to its proofs.

29. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 29 of the SAC and leaves Plaintiff to its proofs.

30. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 30 of the SAC and leaves Plaintiff to its proofs.

31. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 31 of the SAC and leaves Plaintiff to its proofs.

32. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 32 of the SAC and leaves Plaintiff to its proofs.

33. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 33 of the SAC and leaves Plaintiff to its proofs.

34. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 34 of the SAC and leaves Plaintiff to its proofs.

35. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 35 of the SAC and leaves Plaintiff to its proofs.

36. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 36 of the SAC and leaves Plaintiff to its proofs.

37. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 37 of the SAC and leaves Plaintiff to its proofs.

38. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 38 of the SAC and leaves Plaintiff to its proofs.

39. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 39 of the SAC and leaves Plaintiff to its proofs.

40. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 40 of the SAC and leaves Plaintiff to its proofs.

41. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 41 of the SAC and leaves Plaintiff to its proofs.

42. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 42 of the SAC and leaves Plaintiff to its proofs.

43. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 43 of the SAC and leaves Plaintiff to its proofs.

44. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 44 of the SAC and leaves Plaintiff to its proofs.

45. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 45 of the SAC and leaves Plaintiff to its proofs.

## **2. Other Source Material Generator Defendants**

46. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 46 of the SAC and leaves Plaintiff to its proofs.

47. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 47 of the SAC and leaves Plaintiff to its proofs.

#### **JURISDICTION AND VENUE**

48. The allegations of paragraph 48 of the SAC set forth conclusions of law to which no responsive pleading is required.

49. The allegations of paragraph 49 of the SAC set forth conclusions of law to which no responsive pleading is required.

50. The allegations of paragraph 50 of the SAC set forth conclusions of law to which no responsive pleading is required.

51. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 51 of the SAC and leaves Plaintiff to its proofs.

52. The allegations of paragraph 59 of the SAC set forth conclusions of law to which no responsive pleading is required.

#### **GENERAL ALLEGATIONS**

##### **A. The Shore Protection Project and the Public Polluter Defendant's Responsibility for the Lawrence Harbor Shoreline**

53. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 53 of the SAC and leaves Plaintiff to its proofs.

54. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 54 of the SAC and leaves Plaintiff to its proofs.

55. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 55 of the SAC and leaves Plaintiff to its proofs.

56. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 56 of the SAC and leaves Plaintiff to its proofs.

57. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 57 of the SAC and leaves Plaintiff to its proofs.

58. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 58 of the SAC and leaves Plaintiff to its proofs.

59. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 59 of the SAC and leaves Plaintiff to its proofs.

60. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 60 of the SAC and leaves Plaintiff to its proofs.

61. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 61 of the SAC and leaves Plaintiff to its proofs.

62. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 62 of the SAC and leaves Plaintiff to its proofs.

63. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 63 of the SAC and leaves Plaintiff to its proofs.

64. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 64 of the SAC and leaves Plaintiff to its proofs.

65. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 65 of the SAC and leaves Plaintiff to its proofs.

66. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 66 of the SAC and leaves Plaintiff to its proofs.

67. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 67 of the SAC and leaves Plaintiff to its proofs.

68. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 685 of the SAC and leaves Plaintiff to its proofs.

**B. Approval From the Public Defendants for a Private Developer's Use of Lead-Bearing Slag to Construct the Seawall**

69. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 69 of the SAC and leaves Plaintiff to its proofs.

70. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 70 of the SAC and leaves Plaintiff to its proofs.

71. Township denies those allegations in paragraph 71 of the SAC that are directed to Township. Township is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and leaves Plaintiff to its proofs.

72. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 72 of the SAC and leaves Plaintiff to its proofs.

73. Township refers to the memorandum which was attached to Plaintiff's SAC as Exhibit A, which speaks for itself. Otherwise, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

74. Township denies those allegations in paragraph 74 of the SAC that are directed to the Township. Township is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and leaves Plaintiff to its proofs.

75. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 75 of the SAC and leaves Plaintiff to its proofs.

76. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 76 of the SAC and leaves Plaintiff to its proofs.

77. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 77 of the SAC and leaves Plaintiff to its proofs.

78. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 78 of the SAC and leaves Plaintiff to its proofs.

79. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 79 of the SAC and leaves Plaintiff to its proofs.

80. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 80 of the SAC and leaves Plaintiff to its proofs.

81. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 81 of the SAC and leaves Plaintiff to its proofs.

82. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 82 of the SAC and leaves Plaintiff to its proofs.

83. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 83 of the SAC and leaves Plaintiff to its proofs.

84. Township denies those allegations in paragraph 84 of the SAC that are directed to the Township. Township is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and leaves Plaintiff to its proofs.

85. Township refers to the memorandum which was attached to Plaintiff's SAC as Exhibit B, which speaks for itself. Otherwise, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

86. Township refers to the memorandum which was attached to Plaintiff's SAC as Exhibit C, which speaks for itself. Otherwise, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

87. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 87 of the SAC and leaves Plaintiff to its proofs.

88. Township denies those allegations in paragraph 88 of the SAC that are attributable to the Township. Township is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and leaves Plaintiff to its proofs.

89. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 89 of the SAC and leaves Plaintiff to its proofs.

**C. Decision of the Public Polluter Defendants to Allow Lead-Bearing Slag to Remain Even After Concerns About Environmental Contamination Had Been Raised**

90. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 90 of the SAC and leaves Plaintiff to its proofs.

91. Township is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and leaves Plaintiff to its proofs.

92. Township refers to the letter which was attached to Plaintiff's SAC as Exhibit D, which speaks for itself. Otherwise, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

93. Township refers to the newspaper article which was attached to Plaintiff's SAC as Exhibit E, which speaks for itself. Otherwise, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

94. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 94 of the SAC and leaves Plaintiff to its proofs.

95. Township refers to the letter which was attached to Plaintiff's SAC as Exhibit F, which speaks for itself. Otherwise, Township lacks knowledge or information sufficient to form

a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

96. Township refers to the memorandum which was attached to Plaintiff's SAC as Exhibit G, which speaks for itself. Otherwise, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

97. Township refers to the letter which was attached to Plaintiff's SAC as Exhibit H, which speaks for itself. Otherwise, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

98. Township refers to the newspaper article which was attached to Plaintiff's SAC as Exhibit I, which speaks for itself. Otherwise, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

99. Township refers to the document which was attached to Plaintiff's SAC as Exhibit J, which speaks for itself. Otherwise, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

100. Township refers to the letter which was attached to Plaintiff's SAC as Exhibit K, which speaks for itself. Otherwise, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

101. Township refers to the letter which was attached to Plaintiff's SAC as Exhibit L, which speaks for itself. Otherwise, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

102. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 102 of the SAC and leaves Plaintiff to its proofs.

103. Township refers to the document which was attached to Plaintiff's SAC as Exhibit M, which speaks for itself. Otherwise, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

104. Township refers to the document which was attached to Plaintiff's SAC as Exhibit M, which speaks for itself. Otherwise, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

105. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 105 of the SAC and leaves Plaintiff to its proofs.

106. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 106 of the SAC and leaves Plaintiff to its proofs..

107. Township refers to the document which was attached to Plaintiff's SAC as Exhibit N, which speaks for itself. Otherwise, Township lacks knowledge or information

sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

108. Township denies those allegations in paragraph 108 of the SAC that are directed to Township. Township is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and leaves Plaintiff to its proofs.

109. Upon information and belief, Township admits that, in 1975, Madison Township changed its name to Old Bridge Township.

110. Upon information and belief, Township admits that, in 1983, Old Bridge Township acquired by Deed property from Sea-Land. Township refers to the Deed for its terms and otherwise lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

111. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 111 of the SAC and leaves Plaintiff to its proofs.

112. Upon information and belief, Township admits that, in 1998, Middlesex County entered into a ninety-nine year lease (the "Lease Agreement") with Old Bridge Township. Township refers to the Lease Agreement for its terms and otherwise lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 112 of the SAC and leaves Plaintiff to its proofs.

113. Township refers to the Lease Agreement for its terms and otherwise lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 113 of the SAC and leaves Plaintiff to its proofs.

114. Township refers to the Lease Agreement for its terms and otherwise lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 114 of the SAC and leaves Plaintiff to its proofs.

**D. Use of Lead-Bearing Slag to Refurbish the Western Jetty**

115. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 115 of the SAC and leaves Plaintiff to its proofs.

116. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 116 of the SAC and leaves Plaintiff to its proofs.

117. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 117 of the SAC and leaves Plaintiff to its proofs.

118. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 118 of the SAC and leaves Plaintiff to its proofs.

119. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 1119 of the SAC and leaves Plaintiff to its proofs.

120. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 120 of the SAC and leaves Plaintiff to its proofs.

121. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 121 of the SAC and leaves Plaintiff to its proofs.

122. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 122 of the SAC and leaves Plaintiff to its proofs.

123. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 123 of the SAC and leaves Plaintiff to its proofs.

**E. Listing of the RBS Site on the NPL**

124. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 124 of the SAC and leaves Plaintiff to its proofs.

125. Upon information and belief, Township admits that, in June 2008, the NJDEP issued NL a Directive and Notice to Insurers. Township refers to the Directive and Notice to Insurers for its terms and otherwise lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in this paragraph and leaves Plaintiff to its proofs.

126. Upon information and belief, Township admits that the USEPA proposed the RBS Site for listing on the National Priorities List in April 2009 and added the RBS Site to the National Priorities List on November 4, 2009. Township otherwise lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in this paragraph and leaves Plaintiff to its proofs.

127. Upon information and belief, Township admits that the USEPA issued a ROD for the RBS Site on May 23, 2013. Township refers to the ROD for its content and otherwise lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in this paragraph and leaves Plaintiff to its proofs.

128. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 128 of the SAC and leaves Plaintiff to its proofs.

129. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 129 of the SAC and leaves Plaintiff to its proofs.

130. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 130 of the SAC and leaves Plaintiff to its proofs.

131. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 131 of the SAC and leaves Plaintiff to its proofs.

**F. Responsibility of Public Polluter Defendants and Current Property Owners/Operator Defendants**

132. The allegations in paragraph 132 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township denies the allegations as they relate to the Township. Township otherwise lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in this paragraph and leaves Plaintiff to its proofs.

133. The allegations in paragraph 133 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in this paragraph and leaves Plaintiff to its proofs.

134. The allegations in paragraph 134 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in this paragraph and leaves Plaintiff to its proofs.

135. The allegations in paragraph 135 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in this paragraph and leaves Plaintiff to its proofs.

136. The allegations in paragraph 136 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in this paragraph and leaves Plaintiff to its proofs.

137. The allegations in paragraph 137 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township denies the allegations.

138. The allegations in paragraph 138 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in this paragraph and leaves Plaintiff to its proofs.

139. The allegations in paragraph 139 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in this paragraph and leaves Plaintiff to its proofs.

**G. Responsibility of NL Customer Defendants**

140. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 140 of the SAC and leaves Plaintiff to its proofs.

141. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 141 of the SAC and leaves Plaintiff to its proofs.

142. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 142 of the SAC and leaves Plaintiff to its proofs.

143. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 143 of the SAC and leaves Plaintiff to its proofs.

144. The allegations in paragraph 144 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in this paragraph and leaves Plaintiff to its proofs.

145. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 145 of the SAC and leaves Plaintiff to its proofs.

146. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 146 of the SAC and leaves Plaintiff to its proofs.

147. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 147 of the SAC and leaves Plaintiff to its proofs.

148. The allegations in paragraph 148 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in this paragraph and leaves Plaintiff to its proofs.

#### **H. Responsibility of Other Source Material Generator Defendants**

149. The allegations in paragraph 149 of the SAC set forth conclusions of law to which no responsive pleading is required. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

150. The allegations in paragraph 150 of the SAC set forth conclusions of law to which no responsive pleading is required. Township lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained in this paragraph and leaves Plaintiff to its proofs.

**COUNT I**

**COST RECOVERY UNDER CERCLA §107(a)**

Count I of Plaintiff's SAC, set forth in Paragraphs 161 through 166, is the subject of a Partial Motion to Dismiss. To the extent that a response is required for any remaining claims:

151. Township repeats and re-alleges its responses contained in paragraphs 1 through 150.

152. The allegations in paragraph 152 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township denies the allegations.

153. The allegations in paragraph 153 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township denies the allegations.

154. The allegations in paragraph 154 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township denies the allegations.

155. The allegations in paragraph 155 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township denies the allegations.

156. The allegations in paragraph 156 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township denies the allegations.

157. The allegations in paragraph 157 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township denies the allegations.

158. The allegations in paragraph 158 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township denies the allegations.

159. The allegations in paragraph 159 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township denies the allegations.

160. The allegations in paragraph 160 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township denies the allegations.

**WHEREFORE**, Township denies that Plaintiff is entitled to any of the relief set forth in the “Relief” clause, Sections A-D, immediately following Paragraph 160 of the SAC, and Township demands judgment against Plaintiff as follows:

- (a) Dismissing Count I with prejudice
- (b) Providing such other relief as the Court deems appropriate.

**COUNT II**

**CONTRIBUTION UNDER CERCLA §113**

The Second Count of Plaintiff’s SAC set forth in Paragraphs 161 through 166 is the subject of a Motion to Dismiss and therefore no response is required.

**COUNT III**

**DECLARATORY JUDGMENT UNDER CERCLA §113**

167. Township repeats and re-alleges its responses contained in paragraphs 1 through 166.

168. The allegations in paragraph 168 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township denies the allegations.

169. The allegations in paragraph 169 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township denies the allegations.

170. The allegations in paragraph 170 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township denies the allegations.

171. The allegations in paragraph 171 of the SAC set forth conclusions of law to which no responsive pleading is required. To the extent that a response is required, Township denies the allegations.

**WHEREFORE**, Township denies that Plaintiff is entitled to any of the relief set forth in the “Relief” clause, Sections A-B, immediately following Paragraph 171 of the SAC, and Township demands judgment against Plaintiff as follows:

- (a) Dismissing Count III with prejudice
- (b) Providing such other relief as the Court deems appropriate.

**COUNT IV**

**DECLARATORY RELIEF UNDER NEW JERSEY DECLARATORY  
JUDGMENT ACT**

The Fourth Count of Plaintiff's SAC set forth in Paragraphs 172 through 176 is the subject of a Motion to Dismiss and therefore no response is required.

**COUNT V**

**COST RECOVERY AND CONTRIBUTION UNDER THE SPILLACT**

The Fifth Count of Plaintiff's SAC set forth in Paragraphs 177 through 184 is the subject of a Motion to Dismiss and therefore no response is required.

**RELIEF**

**WHEREFORE**, Township demands judgment dismissing Plaintiff's SAC with prejudice, awarding Township its attorneys' fees and costs of suit, and for such other and further relief that the Court may deem equitable, just and proper.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's SAC fails to state any claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Plaintiff lacks standing.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff has not satisfied the statutory prerequisites for its claims under the CERCLA.

**FIFTH AFFIRMATIVE DEFENSE**

Township is not an “owner or operator” as defined by CERCLA because it involuntarily acquired the property on/from which Plaintiff alleges a release of hazardous substances has occurred by virtue of its function as sovereign.

**SIXTH AFFIRMATIVE DEFENSE**

Township did not cause or contribute to the release or threatened release of any hazardous substance into the environment and did not arrange for disposal, treatment or transportation of hazardous substances.

**SEVENTH AFFIRMATIVE DEFENSE**

Any release or threatened release of hazardous substances alleged by Plaintiff on/from property owned or controlled by Township, including any damages resulting therefrom, was caused solely by the acts or omissions of third-parties whose acts or omissions did not occur in connection with a contractual relationship with Township.

**EIGHTH AFFIRMATIVE DEFENSE**

Any wrongful conduct alleged by Plaintiff’s SAC, including any damages resulting therefrom, was proximately caused by the conduct of persons over which Township had no control, or by the superseding, intervening, criminal, illegal, or tortious acts of persons outside of Township’s control.

**NINTH AFFIRMATIVE DEFENSE**

Any damages alleged in Plaintiff’s SAC were caused by an act of God.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff’s claims are barred by the statutory defenses to liability provided to Township by CERCLA.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's SAC is an unauthorized retroactive application of CERCLA and applicable case law.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's SAC includes costs not yet expended. CERCLA does not authorize Plaintiff to recover such future, speculative, remote and contingent costs. Thus, any claims are premature and unripe for adjudication.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's SAC includes costs that are not considered "response costs" consistent with the National Contingency Plan and, therefore, are not recoverable under CERCLA.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred to the extent they seek relief for conduct occurring, or damages incurred, before the effective date of CERCLA.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff has not paid more than its fair share of costs under CERCLA and, therefore, is not entitled to contribution from Township.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiff has not satisfied the statutory prerequisites for its claims under the Spill Act.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Township is not a person who has discharged a hazardous substance or is in any way responsible for any hazardous substance under the Spill Act.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the statutory defenses to liability provided to Township by the Spill Act.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred to the extent they seek relief for conduct occurring, or damages incurred, before the effective date of the Spill Act.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff has not paid more than its fair share of costs under the Spill Act and, therefore, is not entitled to contribution from Township.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff's SAC includes costs not yet expended. The Spill Act does not authorize Plaintiff to recover such future, speculative, remote and contingent costs. Thus, any claims are premature and unripe for adjudication.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiff's SAC is an unauthorized retroactive application of the Spill Act and applicable case law.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiff's SAC includes costs that are not considered "cleanup and removal costs" recoverable under the Spill Act.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff's claims against Township are subject to contribution or any reduction or offset from other parties, any damages recovered against Township shall be reduced accordingly.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

To the extent Township is found liable in this matter, joint and several liability is inappropriate because there are distinct harms or a reasonable basis for apportionment of the harm suffered.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff's claims are not barred by their own conduct, then any recovery by Plaintiff should be reduced in the proportion that Plaintiff's acts or omissions that caused the alleged injuries or damages.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff failed to provide notice to Township that it was considered a potentially responsible party prior to undertaking actions relating to the site, which has precluded Township from commenting upon or participation in the selection of the remedial action of the site. This has resulted in a deprivation of Township's substantive and procedural due process rights under the Federal and State Constitutions.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Township is not liable pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to 12.3.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to provide notice in accordance with N.J.S.A. 59:8-1 et seq.

**THIRTIETH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because the claims are an improper collateral attack upon the USEPA's and/or NJDEP's agency action, strategy and/or tactics.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrines of abstention and/or primary jurisdiction.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of preemption.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of *parens patriae*.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because its claims are duplicative of governmental action and the USEPA and/or NJDEP is/are, and/or will be, diligently prosecuting an action to resolve any alleged endangerment.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to exhaust administrative remedies.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because the alleged contamination, if any, does not exceed applicable state action levels.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

At all times relevant to this matter, Township complied with all applicable laws, regulations, and/ or standards.

**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

At all times relevant to this matter, Township acted reasonably, in good faith, and with skill, care, prudence and diligence.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

Without admitting liability, if it is determined that Township engaged in any activities alleged by the SAC, such activities were *de minimis*.

**FORTIETH AFFIRMATIVE DEFENSE**

Plaintiff fails to plead its claims with sufficient particularity against Township.

**FORTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover attorneys' fees or costs, or fees of litigation.

**FORTY-SECOND AFFIRMATIVE DEFENSE**

Recovery is barred in this action by the principles of res judicata and collateral estoppel.

**FORTY-THIRD AFFIRMATIVE DEFENSE**

Township was not a joint tortfeasors and is not liable for contribution or indemnification to any other party.

**FORTY-FOURTH AFFIRMATIVE DEFENSE**

Recovery is barred in this action by virtue of the entire controversy doctrine.

**FORTY-FIFTH AFFIRMATIVE DEFENSE**

Recovery is barred in this action by principles of waiver.

**FORTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by virtue of their failure to join necessary and indispensable parties pursuant to Rule 19 of the Federal Rules of Civil Procedure.

**FORTY-SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred and/or limited, in whole or in part, by the doctrine of unclean hands.

**FORTY-EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

**FORTY-NINTH AFFIRMATIVE DEFENSE**

Township incorporates by reference as though fully set forth herein at length all defenses available to it under the statutes cited in Plaintiff's SAC.

**FIFTIETH AFFIRMATIVE DEFENSE**

Township hereby asserts and adopts all other defenses which have been or will be asserted at any time by any other party in this action, to the extent said defenses are applicable to Township.

**FIFTY-FIRST AFFIRMATIVE DEFENSE**

Township reserve the right, without limitation, to amend its Answer to assert additional Affirmative Defenses, Counterclaims, Cross-Claims, Answers to Cross-Claims and/or Third-Party Claims that may be uncovered during the course of this action.

**COUNTERCLAIM FOR CONTRIBUTION  
UNDER CERCLA §113**

1. In Paragraphs 1 through 150 of the SAC, Plaintiff has alleged that Township and other Defendants ("Non-Township Defendants") are liable for response costs incurred at the RBS Site.
2. To the extent that Plaintiff proves some or all of those allegations, Defendants are liable for response costs under CERCLA §107(a), 42 U.S.C. §9607(a).
3. Plaintiff has filed a civil action against Township under CERCLA §107(a), 42 U.S.C. §9607(a).

4. Pursuant to CERCLA §113(f)(1), 42 U.S.C. §9613(f)(1), to the extent that Township is found liable for response costs for the RBS Site, Plaintiff is liable to Township in contribution for Plaintiff's fair share of the response costs.

**WHEREFORE**, Township demands judgment in its favor and against Plaintiff: (a) Finding that, if Township is responsible for response costs at the RBS Site, then Plaintiff is liable under CERCLA in contribution in an amount equal to its equitable fair share of the response costs to be incurred by Township in connection with the RBS Site; and (b) Providing for such further relief as the Court deems just and proper.

**CROSS-CLAIM FOR CONTRIBUTION**  
**UNDER CERCLA §113**

1. In Paragraphs 1 through 150 of the SAC, Plaintiff has alleged that Township and Non-Township Defendants are liable for response costs incurred at the RBS Site.

2. To the extent that Plaintiff proves some or all of those allegations, Non-Township Defendants are liable for response costs under CERCLA §107(a), 42 U.S.C. §9607(a).

3. Plaintiff has filed a civil action against Township under CERCLA §107(a), 42 U.S.C. §9607(a).

4. Pursuant to CERCLA §113(f)(1), 42 U.S.C. §9613(f)(1), to the extent that Township is found liable for response costs for the RBS Site, Non-Township Defendants are liable to Township in contribution for their fair share of the response costs.

**WHEREFORE**, Township demands judgment in its favor and against Non-Township Defendants: (a) Finding that, if Township is responsible for response costs at the RBS Site, then Non-Township Defendants are liable under CERCLA in contribution in an amount equal to their equitable fair share of the response costs to be incurred by Township in connection with the RBS Site; and (b) Providing for such further relief as the Court deems just and proper.

**ANSWER TO ALL CROSS-CLAIMS**

Defendant Township of Old Bridge, by way of an Answer to any and all Cross-Claims that have or may in the future be asserted against Township by other Defendants of Third-Party Defendants, denies the allegations of any Cross-Claims and denies that Cross-Claimant(s) are entitled to relief.

**WHEREFORE**, Township demands judgment dismissing any and all Cross-Claims against it with prejudice, together with costs, fees and any further relief as the Court deems just and proper.

**PRAYER FOR RELIEF**

**WHEREFORE**, Defendant Township of Old Bridge respectfully request that this Court:

- a. Enter judgment in Township's favor;
- b. Deny all relief sought by Plaintiff in the SAC;
- c. Dismiss the SAC in its entirety and with prejudice;
- d. Award Township costs and fees incurred in the defense of this action; and
- e. Award to Township such further relief as the Court deems just and proper.

**RULE 11.2 CERTIFICATION**

I hereby certify that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

**DECOTIIS, FITZPATRICK,  
& COLE, LLP**  
Attorneys for Defendant,  
Township of Old Bridge

By: /s/ Kevin M. Kinsella, Esq.

Dated: November 18, 2013

**CERTIFICATION OF SERVICE**

The undersigned certifies that, on this day, Defendant Township of Old Bridge's Answer, Affirmative Defenses, Counterclaims, Cross-Claim, and Answer to Cross-Claims were served upon all counsel of record via the Court's ECF system:

**DECOTIIS, FITZPATRICK,  
& COLE, LLP**  
Attorneys for Defendant,  
Township of Old Bridge

By: /s/ Kevin M. Kinsella, Esq.

Dated: November 18, 2013